

NICHOLAS STROZZA (SBN 117234)
Assistant United States Trustee
TIMOTHY S. LAFFREDI (WI Bar No. 1055133)
Assistant United States Trustee
TREVOR R. FEHR (SBN 316699)
Trial Attorney
United States Department of Justice
Office of the U.S. Trustee
450 Golden Gate Avenue, Suite 05-0153
San Francisco, CA 94102
Telephone: (415) 705-3339
Facsimile: (415) 705-3379
Email: Trevor.Fehr@usdoj.gov

Attorneys for TRACY HOPE DAVIS
United States Trustee for Region 17

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

| | | |
|-----------------------------------|---|-----------------------------|
| In re |) | Case No. 19-41564 RLE |
| BROOK STREET HOLDINGS LLC, |) | |
| |) | Chapter 7 |
| Debtor. |) | |
| |) | Date: February 19, 2020 |
| |) | Time: 2:00 p.m. |
| |) | Courtroom: Courtroom 201 |
| |) | 1300 Clay Street |
| |) | Oakland, CA 94612 |
| |) | |
| |) | Honorable Roger L. Efremsky |

UNITED STATES TRUSTEE'S STATUS CONFERENCE STATEMENT

Tracy Hope Davis, United States Trustee for Region 17 ("United States Trustee"), by and through her undersigned counsel, hereby submits this Status Conference Statement:

Background

1. On July 10, 2019, Brook Street Holdings LLC ("Debtor") filed a voluntary Chapter 7 petition ("Petition"), under the United States Bankruptcy Code, thereby initiating the instant case. ECF No. 1. The Petition was filed under Attorney Donald Schwartz's ECF Login, but the Petition contained the signature of Attorney David Kelvin. *Id.*

1 2. That same day, the Debtor filed a Motion to Dismiss Case (“Motion to Dismiss”).
2 ECF No. 2. The Motion to Dismiss was filed under Mr. Schwartz’s ECF Login, but the document
3 contained the signature of Mr. Kelvin. *Id.*

4 3. On August 5, 2019, the Bankruptcy Court issued an Order to Show Cause (“OSC”)
5 requiring Mr. Schwartz and Mr. Kelvin to appear and explain the discrepancy between the filer
6 and the attorney signature on the Petition and Motion to Dismiss. ECF No. 5. The Bankruptcy
7 Court set the Show Cause hearing for September 11, 2019. ECF No. 5.

8 4. On September 11, 2019, the Bankruptcy Court held the initial Show Cause hearing
9 and inquired of Messrs. Kelvin, Schwartz, and Bellicini. The Court then continued the Show Cause
10 hearing to October 10, 2019, to allow for Mr. Kelvin and Mr. Schwartz to provide additional
11 responses. ECF No. 24.

12 5. On October 10, 2019, the Bankruptcy Court held the continued Show Cause
13 hearing, at which Messrs. Kelvin, Schwartz, and Bellicini, and counsel for the United States
14 Trustee, appeared. After further inquiry, the Court continued the hearing indefinitely. *See* Docket.
15

16 6. On January 22, 2020, the Bankruptcy Court issued an Order Setting Status
17 Conference for February 19, 2020 to conduct a status conference regarding the current status of
18 the case (“Status Conference”). ECF No. 56.

19
20 **Update Regarding Rule 2004 Order for Examination and Production of Documents**

21 7. On October 9, 2019, the United States Trustee filed a Motion for Rule 2004
22 Examination and for Production of Documents, requesting that the Court require Edwin Heath to
23 appear for examination and to produce documents and information related to the bankruptcy filing.
24 ECF No. 37.

25 8. On October 11, 2019, the Court entered an Order for Rule 2004 Examination and
26 to Produce Documents (the “Rule 2004 Order”). ECF No. 39. The Rule 2004 Order required that
27
28

1 Mr. Heath provide required documents by November 6, 2019, and appear for a Rule 2004
2 Examination on November 18, 2019. *Id.*

3 9. On February 4, 2020, the United States Trustee filed a Motion for an Order
4 Compelling Compliance with the Order for Rule 2004 Examination and Production of Documents
5 (the “Motion to Compel”) and set if for hearing on March 4, 2020 at 2:00 p.m. ECF Nos. 61 *and*
6 62.

7 10. As detailed in the Motion to Compel and its corresponding exhibits, the Rule 2004
8 Examination was initially held on December 18, 2019 and continued to February 12, 2020. ECF
9 No. 61. Mr. Heath failed to provide any of the documents or information required by the Rule 2004
10 Order. *Id.* Mr. Heath did not seek reconsideration of the Rule 2004 Order at any time; instead, Mr.
11 Heath, through his counsel Mr. Russo, sent a letter indicating that Mr. Heath would be asserting
12 his Fifth Amendment privileges against self-incrimination, and accordingly would not produce
13 any documents. *Id.* At the Rule 2004 Examination on December 18, 2019, Mr. Heath responded
14 to all inquiries asking why he has not provided any of the required documents with “[o]n advice
15 of counsel, I take the Fifth Amendment.” *Id.*
16

17 11. In the Motion to Compel, the United States Trustee requests that the Bankruptcy
18 Court compel Mr. Heath to produce the requested documents and information unless Mr. Heath
19 demonstrates that his refusal to comply with each request made under the Rule 2004 Order is
20 proper. *Id.*
21

22 12. The United States Trustee requests that after the hearing on February 19, 2020, the
23 Status Conference be continued trail the resolution of the Motion to Compel.
24

25 Dated: February 5, 2020

TRACY HOPE DAVIS
UNITED STATES TRUSTEE

27 By: /s/ Trevor R. Fehr

28 Trevor R. Fehr

Trial Attorney for the United States Trustee